

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-285

May 11, 1999

TELEPHONE ASSOCIATION OF MAINE
Request For Protective Order for Information
on Page 27 of Annual Report

ORDER

WELCH, Chairman; NUGENT, and DIAMOND Commissioners

I. SUMMARY

In this Order we grant, in part, the Telephone Association of Maine (TAM) request for a protective order for certain information required on the Commission's Annual Report. The Protective Order granted is applicable to all local exchange carriers.

II. BACKGROUND

In late January 1999, the Commission sent all local exchange carriers (LECs) the forms for filing the annual report required by Chapter 210, § 3 of the Commission's rules and 35-A M.R.S.A. §§ 501-504. The form directed LECs to file two new types of information (on Page 27 of the form sent to Independent LECs; Page 9 of the form sent to Competitive Local Exchange Carriers (CLECs). The form asks for a schematic or diagram of the utility's Inter-Office Network. This information will be used by the Commission to assist in evaluating network reliability, especially when outages occur. With regard to intraLATA presubscription (ILP), the form asks for the utility's default intrastate toll carrier, the names of IXC's who have signed up for ILP with the LEC, and the number and percentage of residential and business lines that are presubscribed to an IXC other than the default carrier. The Commission will use this information to monitor competition in the intrastate interexchange market.

Page 27 (or 9) also asks the utility to report the number of originating calls completed, by exchange, plus the number of billed minutes, for both interstate and intrastate toll calls. The Commission has requested this information as part of the Annual Report for at least the last 15 years.

On April 29, 1999, TAM submitted a request¹ for issuance of a protective order pursuant to M.R. Civ. P. 26(c), for certain of the information requested on Page 27. They claim the information on toll call minutes, inter-office network configuration and number of lines presubscribed to IXC's is confidential business information. The protective order requested would limit use of the information to Commission members and staff, the Office of the Public Advocate, and each utility filing the information.

III. STATUTORY AUTHORITY

Annual reports filed with the Commission are considered public records that are available for public inspection pursuant to the Freedom of Access Law, unless "designated confidential by statute" or "within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding." 1 M.R.S.A. § 402(3) (A) and (B) and § 408. The Commission is not aware of any information required in an annual report that is designated confidential by statute. If a utility believes that any information provided in its annual report has been so designated or is privileged, it may request a protective order from the Commission pursuant to M.R. Civ. P. 26(c). The right to make such a request was explicitly stated in our Order adopting Chapter 210. *Public Utilities Commission, Uniform System of Accounts for Telephone Utilities (Chapter 210)*, Order Adopting Rule and Factual and Policy Basis, Docket No. 88-309 (Mar. 28, 1989) at 15.

At issue in TAM's request is the Rule 26(c) provision allowing protective orders upon a motion by a party or person, for good cause shown, to limit the disclosure of "a trade secret or other confidential research, development, or commercial information." If the Commission determines protection is warranted, 35-A M.R.S.A. § 1311-A makes those records placed under protection not subject to the public records disclosure requirements of 1 M.R.S.A. § 408.

IV. TAM's REQUEST FOR PROTECTIVE ORDER

A. Toll Calls

1. TAM's Argument

TAM claims that the number of originating calls and billed minutes, by exchange, for both interstate and intrastate toll calls is competitively sensitive

¹TAM states that it submits the request on behalf of its members, however, each member is free to take a different or separate position with regard to the matter addressed in the request.

information regarding the toll business of incumbent LECs (ILECs). According to TAM, this information provides competitors with a road map to markets of the incumbent carriers and their competitive value. It claims competitive carriers are not required to disclose this information, thus placing the ILECs at a disadvantage.

2. Commission's Decision

As mentioned above, Page 27 has always required carriers to report information about calls completed.² Carriers have not requested that this information be treated as confidential in previous years.³ TAM's claim that competitive carriers are not required to disclose this information is incorrect. CLECs are required to provide the same information on Page 9 of their Annual Reports. We do not understand how disclosure of this information competitively disadvantages ILECs. The Independent ILECs currently provide access to toll service, not toll service itself. Should they desire to do so, they will be required to meet the same requirements as other interexchange carriers. We deny TAM's request as it relates to reporting of toll call numbers and minutes.

B. Inter-Office Network

1. TAM's Argument

TAM claims the information regarding inter-office networks is private business information and competitively sensitive. Once again it argues that the information provides a road map to competitors. Further, TAM believes it creates a serious security issue, providing information to persons who might use it to disrupt the public switched network.

2. Commission Decision

We agree that the information requested concerning inter-office network configuration is confidential business information, due to the security issue raised by TAM. Therefore, we will require the information to be filed pursuant to protective order, as further described in Section V below.

²Earlier versions of Page 27 also asked for minutes for local calls. Carriers were unable to provide this information, so this requirement was eliminated.

³The only exception is Sprint Communications Company's 1995 request that its entire annual report be subject to a protective order prohibiting public disclosure. The Commission denied that request because the risk of harm to Sprint was outweighed by the strong general interest in disclosure of public records. The Commission did state that if future conditions changed, Sprint was free to renew its request. *Sprint Communication Co., Request for Protective Order for Information Contained in 1994 Annual Report*, Docket No. 95-137 (Aug. 30, 1995).

C. IntraLATA Presubscription (ILP)

1. TAM's Argument

TAM does not object to answering question 1 (name of default carrier) and question 2 (names of IXC's who have signed up for ILP with the LEC). However, TAM believes that information regarding the number and percentage of residential and business lines that have presubscribed to competitive IXC's is competitively sensitive market information which should not be publicly disclosed.

2. Commission Decision

We fail to see how the number and percentage of residential line presubscribed to competitive IXC's is competitively sensitive business information that warrants protection under M.R. Civ. P. 26(c). We disagree with TAM's claim that the IXC's would likely object to the disclosure of this information. The information is in a gross form and does not require the identification of any individual IXC. We do recognize that LEC's providing toll service may have a competitive interest in not disclosing the number of customers who have chosen another carrier. Bell Atlantic has provided this information in the past and requested confidential treatment. We grant protection to any LEC which is providing toll service. Our records show this would include Bell Atlantic at this time.

V. PROTECTIVE SCHEME

We issue the attached Protective Order to cover the two areas described above as warranting protection: description of inter-office network and number and percentage of residential and business lines that are presubscribed to IXC's other than the default carrier for those LEC's providing toll service. This confidential information should be contained in a separate "report" which the utility refers to on Page 27 (or Page 9) of its Annual Report. This will allow the Annual Report to be publicly available without the need for redacted copies. We will generally follow the scheme set out in Chapter 210, § 7, for confidential information related to unregulated affiliates. The Protective Order is applicable to all local exchange carriers.

All TAM members are granted an extension until seven days from the date of this Order to provide the information on Page 27.

In the future, any carrier seeking protective orders for information it considers to be confidential business information or a trade secret, should include in its request answers to the following questions:

1. Why the information derives economic value from not being generally known to others; and
2. How others can obtain economic value from its disclosure.

This will allow the Commission to more consistently evaluate claims for such protection.

Accordingly, we

O R D E R

1. That the attached Protective Order is issued; and
2. That a copy of this Order be sent to all Local Exchange Carriers.

Dated at Augusta, Maine this 11th day of May, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

PUBLIC UTILITIES COMMISSION

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May 11, 1999

TELEPHONE ASSOCIATION OF MAINE
Request for Protective Order for Information on
Page 27 of Annual Report

PROTECTIVE ORDER
For All Local Exchange
Carriers

On April 29, 1999, the Telephone Association of Maine (TAM) filed a request that the Commission issue a Protective Order on behalf of Incumbent Local Exchange Carriers (ILECs) concerning certain information required by page 27 of their Annual Reports. TAM claims the information is confidential, proprietary and competitively sensitive business information, as well as information which could pose a potential security risk to the public switched network if made publicly available. TAM asserts that the public release of this information would be damaging to the interests of the ILECs, their customers and the public. Accordingly, TAM has requested the issuance of a Protective Order which would limit the use of such information to the Commission, its Staff, and the Public Advocate.

In order to expedite the provision of this information to the Commission, the Staff and the Public Advocate, the Commission concludes that the limited and revocable protection of certain information required on the Annual Report is warranted under Rule 26(c) of the Maine Rules of Civil Procedure, for local exchange carriers, as described below.

Any person at any time can move for a finding that material subject to protection should no longer be so treated or that such information be provided, pursuant to protective provisions. Unless such a motion is granted, however, use of the confidential materials continues to be restricted by the terms of this Protective Order.

Accordingly, it is

ORDERED

1. That the responses to the information requested concerning inter-office networks on page 27 of Telephone Utilities Form A of the Annual Report to the Public Utilities Commission and page 9 of the Annual Report for Competitive Local Exchange Carriers, shall be "Designated Confidential Information" for purposes of this Order. In addition, information requested concerning intraLATA presubscription (question 3) on Page 27 of the Telephone Utilities Form A to the Public Utilities Commission and Page 9 of the Annual Report for Competitive Local Exchange Carriers shall be "designated confidential information" only for those local exchange carriers that provide in-state toll service. Until such time as this Order is modified, access to such Designated Confidential Information shall be limited to the persons identified in Paragraph 4 below. In submitting any information to the Commission, the local exchange carrier (LEC) shall identify any confidential information as Designated Confidential

Information and mark it as "Confidential." Any such information which is so identified shall be treated as Designated Confidential Information, unless otherwise ordered.

2. That all Designated Confidential Information shall, unless removed from the coverage of the Order as provided in paragraph 3 below, be and remain confidential. Such Designated Confidential Information shall neither be used nor disclosed for any purpose other than the purposes of review and inspection by the persons identified in Paragraph 4, below, and then solely in accordance with this Order. No person to whom access to Designated Confidential Information is accorded pursuant to Paragraph 4 of this Order shall disclose or reveal, directly or indirectly, the content of the Designated Confidential Information to others except as provided in Paragraph 4.

3. A person may challenge designation of such documents or other information as confidential by motion to the Commission and upon reasonable prior notice to the local exchange carrier and an opportunity for hearing. In considering such motion, the usual burdens of proof and production shall apply and no additional presumption shall be given as a result of the prior designation of material as Confidential Information. Upon the entry to an order granting such a motion, the provisions and restrictions of this Order shall cease to bind any party or other person with respect to such documents or information as the Order granting the motion shall expressly and clearly remove from the coverage of this Order.

4. That, unless the Order is modified, access to Designated Confidential Information shall be limited to the Commission's members and Staff, the Office of the Public Advocate, and the local exchange carrier.

5. That no copies of Designated Confidential Information shall be circulated to persons other than those persons who are authorized under Paragraph 4 of this Order to obtain Designated Confidential Information. Persons authorized under Paragraph 4 may take such notes with regard to the Designated Confidential Information as may be necessary. Such notes shall also be treated as Designated Confidential Information.

6. That the restrictions upon, and obligations accruing to, persons who become subject to this Order shall not apply to any Designated Confidential Information, if the Commission rules, after reasonable notice and hearing, that such Designated Confidential Information was publicly known at the time it was furnished or has since become publicly known through no fault of the receiving party.

7. That any Designated Confidential Information shall remain in the possession of the Commission, under seal, and subject to the protective requirements of this Order, unless the Commission or its authorized presiding officer shall otherwise order. The Designated Confidential Information shall be maintained by the Commission under seal and segregated from the public files of the Commission, including segregation from the Annual Reports of Telephone Companies.

8. That the Commission may draw upon all Designated Confidential Information in performance of its duties, but the Commission will avoid public disclosure of any Designated Confidential Information.
9. That this Order may be modified on motion of any person or on the Commission's own motion upon reasonable prior notice and an opportunity for hearing.

Dated at Augusta, Maine this 11th day of May, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director